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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF MARICOPA

11 STATE OF ARIZONA, ex rel., TERRY
12 GODDARD, Attorney General, and
13 FELECIA A. ROTELLINI,
Superintendent, Arizona Department of
Financial Institutions,

14 Plaintiffs,

15 -VS-

17 RICHARD WINER and COLLEEN
18 WINER, husband and wife; TAKEN
19 CARE OF INVESTMENTS, LLC;
20 HOMEOWNER SOLUTIONS, LLC;
21 BOURBON STREET PROPERTY
MANAGEMENT, LLC; and
FILIBUSTER, LLC;

22 Defendants.

Case No. CV2009-006810

CONSENT JUDGMENT

(Assigned to the Honorable Joseph
Heilman)

23 Plaintiffs, the State of Arizona and Felecia Rotellini, Superintendent, Arizona
24 Department of Financial Institutions, ("State"), having filed a complaint alleging
25 violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*, the Arizona
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1 Debt Management Companies Act, A.R.S. §6-701 *et seq.*, Arizona's Mortgage Broker
2 License Law, A.R.S. § 6-901, *et seq.* and Arizona's Mortgage Banker License Law,
3 A.R.S. § 6-943, *et seq.*, and the Defendants Richard Winer; Colleen Winer; Taken Care
4 of Investments, LLC; Homeowner Solutions, LLC; Bourbon Street Property
5 Management, LLC and Filibuster, LLC ("Defendants") having waived service of the
6 Summons and Complaint; having been fully advised of their right to a trial in this matter
7 and, after receiving advice of counsel, having waived the same; having admitted that this
8 Court has jurisdiction over the subject matter and the parties for purposes of entry of this
9 Consent Judgment; having admitted to the Stipulated Findings of Fact and Conclusions of
10 Law; and having acknowledged that this Court retains jurisdiction for the purpose of
11 enforcing this Consent Judgment; the Court makes the following findings of fact and law
12 and enters the following orders.

13 I. PARTIES

14 1. Plaintiff State of Arizona, ex rel. Terry Goddard, is the Attorney General of the
15 State of Arizona.

16 2. Plaintiff Felecia A. Rotellini is the Superintendent of the Arizona Department
17 of Financial Institutions.

18 3. Defendants Richard Winer and Colleen Winer, husband and wife, are residents
19 of Maricopa County, State of Arizona.¹

20 4. Defendant Colleen Winer is named herein solely because of her interest in the
21 marital community of Richard and Colleen Winer.

22 5. Defendants Taken Care of Investments, LLC, Homeowner Solutions, LLC,
23 Bourbon Street Property Management, LLC, and Filibuster, LLC, are Arizona limited
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1 liability companies, located in Maricopa County, Arizona.

2 **II. STIPULATED FINDING OF FACTS**

3 6. The acts, omissions or other conduct of Defendants and their employees or
4 agents described in these Stipulated Finding of Facts were undertaken for the furtherance
5 of and on behalf of the marital community of Richard and Colleen Winer.

6 7. Defendants made one or more of the following false representations to
7 homeowners facing foreclosure:

- 8 A. entering into a sale-leaseback/equitable mortgage transaction would help
9 homeowners regain ownership of their home;
10 B. homeowners would successfully be able to repurchase their home at the end
11 of the option period;
12 C. prompt and timely lease payments would improve the homeowners' credit
13 history and allow them to refinance with an institutional lender in order to
14 exercise their option to repurchase;
15 D. homeowners could sell their property at any time during the option period;
16 E. Defendants would not sell the property until the expiration of the buyback
17 option period;

18 8. Defendants also represented that they had fully disclosed all pertinent
19 information, while failing to disclose:

- 20 A. that homeowners' mortgage agreements prohibited them from entering into
21 a sale-leaseback/equitable mortgage transaction; and/or
22 B. the information required by the Homeowners Equity Protection Act
23 (HOEPA), which includes the annual percentage rate (APR), the amount
24 financed and the total finance charge of the loan, notice of the right of
25 rescission and the information required by the Federal Truth in Lending Act
26 (TILA), which would have required Defendants to disclose the Annual

1 Percentage Rate (APR) of the mortgage, and the homeowner's right to rescind
2 the transaction within three days of receiving notification of the right.

3 9. At the time the representations were made, Defendant Richard Winer and his
4 employees or agents made the representations with such reckless disregard for the truth
5 as to constitute willful misrepresentation and knew that their omission of material facts
6 amounted to false representations;

7 10. The representations and omissions were made with the intent to deceive;

8 11. The homeowner reasonably relied on the representations and omissions; and

9 12. The homeowner suffered loss as a result of the misrepresentations and
10 omissions.

11 13. Defendants misrepresented and/or omitted material facts with the intent that
12 consumers rely on the misrepresentation or omission.

13 14. Defendants disclosed to any and all subsequent assignees of the properties all
14 material facts, events, representations, omissions, surrounding circumstances, conditions
15 and conversations surrounding the sale/leaseback/equitable mortgage transactions.

16 15. Defendants received monthly payments from former homeowners and
17 distributed them to mortgage lenders on the former homeowner's behalf.

18 16. Defendants, for compensation, made, or indirectly made, negotiated or offered
19 to make or negotiate mortgage loans and mortgage banking loans, in the form of
20 equitable mortgages, as defined by A.R.S. § 6-901 and § 6-941, without being licensed as
21 a mortgage banker or mortgage broker.

22 17. The Parties intend this stipulation of fact to establish that the restitution award
23 set forth in this Consent Judgment is a debt that is excepted from discharge under
24 Bankruptcy Code provision 11 U.S.C.A. § 523(a)(2)(A).

25 **III. CONCLUSIONS OF LAW**

26 18. Defendants' acts and practices in connection with the purchase, leaseback and

1 sale of properties from homeowners facing foreclosure as set forth in the foregoing
2 Findings of Facts and the Complaint constitute deceptive acts and practices, fraud, false
3 pretenses, false promises, misrepresentations and the concealment, suppression or
4 omission of material facts with the intent that others rely thereon, in violation of the
5 Arizona Consumer Fraud Act.

6 19. While engaging in the acts set forth in the Findings of Facts herein,
7 Defendants at all times knew or should have known that their conduct was of the nature
8 prohibited by A.R.S. § 44-1522.

9 20. Defendants operated as debt management companies, mortgage bankers and
10 mortgage brokers without having first applied for and obtained a license under Title 6, in
11 violation of A.R.S. §§ 6-703, 6-909(B), and 6-943(A).

12 **IV. INJUNCTION**

13 21. The effective date of this Consent Judgment is the date it is signed by the
14 Court.

15 22. This injunction applies to all Defendants, their employees, agents, successors,
16 members, officers and directors, assigns and their successors, or any other person or
17 business acting in concert with them, at their direction or on their behalf.

18 23. Defendants are removed and prohibited from further participation in any
19 manner as a director, officer, employee, agent or other person in the conduct of the affairs
20 of any financial institution or enterprise in the State of Arizona under the jurisdiction of
21 the Arizona Department of Financial Institutions, pursuant to A.R.S. § 6-161. Defendants
22 waive the notice and hearing provisions of A.R.S. § 6-161.

23 24. Defendants shall comply with the Arizona Consumer Fraud Act, A.R.S. § 44-
24 1521, *et. seq.*, as it is currently written, or as it is amended in the future.

25 **V. PAYMENT**

26 25. Defendants Richard Winer, the marital community of Richard and Colleen

1 Winer, Taken Care of Investments, LLC, Homeowner Solutions, LLC, Bourbon Street
2 Property Management, LLC, and Filibuster, LLC, jointly and severally, shall pay to the
3 Arizona Attorney General the amount of \$150,000.00 in civil penalties to be used for
4 consumer fraud education and for investigative and enforcement operations of the
5 consumer protection division in accordance with A.R.S. § 44-1531.01(C). This payment
6 shall become due and payable within 60 days of the effective date of this Judgment.

7 26. Defendants Richard Winer, the marital community of Richard and Colleen
8 Winer, Taken Care of Investments, LLC, Homeowner Solutions, LLC, Bourbon Street
9 Property Management, LLC, and Filibuster, LLC, jointly and severally, shall pay to the
10 Superintendent of the Arizona Department of Financial Institutions the amount of
11 \$150,000.00 in civil penalties to be used for investigative proceedings, to include
12 examination and supervision of the mortgage industry, or for purposes of instituting and
13 prosecuting civil actions pursuant to Title 6, in accordance with A.R.S. § 6-135. This
14 payment shall become due and payable within 60 days of the effective date of this
15 Judgment.

16 27. Defendants Richard Winer, the marital community of Richard and Colleen
17 Winer, Taken Care of Investments, LLC, Homeowner Solutions, LLC, Bourbon Street
18 Property Management, LLC, and Filibuster, LLC, jointly and severally shall pay to the
19 Arizona Attorney General the amount of \$391,500.00 for consumer restitution. This
20 amount shall be distributed, on a *pro rata basis*, to those consumers who entered into
21 sale-leaseback transactions with the Defendants, as reflected in the records of the
22 Arizona Attorney General's Office. This amount shall be due and payable within 60 days
23 of the effective date of this Judgment.

24 28. In the event that any portion of the restitution ordered herein cannot be
25 distributed to eligible consumers, the excess amount shall be used for consumer fraud
26 education and for investigative and enforcement operations of the consumer protection

1 division in accordance with A.R.S. § 44-1531.01(C).

2 29. The restitution funds shall be deposited in an interest bearing account.

3 30. Payments received from Defendants shall first satisfy the restitution portion
4 of the judgment and then the civil penalty portion.

5 31. The sole and separate property of Colleen Winer is excepted and exempt from
6 the civil penalty and the restitution judgment.

7 **VI. GENERAL TERMS**

8 32. The Parties have agreed to a voluntary compromise of disputed claims, and
9 the Parties have agreed on a basis for the settlement of these matters in dispute.

10 33. The State acknowledges by its execution hereof that this Consent Judgment
11 constitutes a complete settlement of its allegations against Defendants and it agrees that it
12 shall not institute any additional civil action against Defendants that is based upon the
13 conduct described in the State's Complaint. Notwithstanding the foregoing, the State
14 may institute an action or proceeding to enforce the terms and provisions of this Consent
15 Judgment or to take action based on future conduct by the Defendants.

16 34. The Defendants shall not represent or imply that the Attorney General, the
17 State, or any agency thereof, has approved any of their actions or has approved any of
18 their present or future actions or practices, and the Defendants are enjoined from
19 representing anything to the contrary.

20 35. This Consent Judgment may be modified or vacated by order of this Court.
21 After providing at least thirty (30) days written notice and after making a good faith
22 effort to obtain concurrence of the other party for the requested order to modify or vacate,
23 which concurrence shall not be unreasonably withheld, the party seeking an order to
24 modify or vacate may petition the Court therefore. The Court will modify or vacate this
25 Consent Judgment upon a showing of good cause.

26 36. Before initiating any proceeding to enforce this Consent Judgment, the

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1 Attorney General shall provide at least thirty (30) days written notice to Defendants of its
2 intent to initiate such proceedings, and shall give Defendants a reasonable opportunity to
3 cure any alleged violation. Whenever possible, the parties shall seek to resolve an
4 alleged violation of this consent Judgment by discussion. The Attorney General shall
5 give good faith consideration as to whether Defendants have taken corrective action
6 designed to cause the claimed violation to be cured and to prevent future occurrences.

7 37. This Court retains jurisdiction of this matter for the purpose of entertaining an
8 application by the State for the enforcement of this Consent Judgment.

9 38. This Consent Judgment is the result of a compromise and settlement
10 agreement between the parties. Only the parties to this action may seek enforcement of
11 this Consent Judgment. Nothing herein is intended to create a private right of action by
12 other parties.

13 39. This Consent Judgment shall not limit the rights of any private party to pursue
14 any remedies allowed by law.

15 40. Nothing herein prohibits the State from taking actions necessary to protect
16 public health and safety as provided by applicable law.

17 41. If any portion of this Consent Judgment is held invalid by operation of law,
18 the remaining terms thereof shall not be affected and shall remain in full force and effect.

19 42. Pursuant to Rule 54(b) of the Arizona Rules of Civil procedure, the Court has
20 determined that there is no just reason for delay and hereby directs that this Judgment
21 against Defendants be entered forthwith.

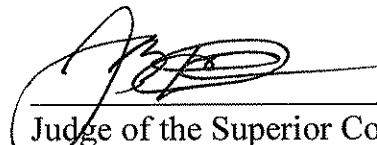
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23 DATED this 4th day of September, 2009

24 The foregoing instrument is a full, true and
25 correct copy of the original document.

26 Attest Sept 4 20 09

MICHAEL K. JEANES, Clerk of the Superior
Court of the State of Arizona, in and for the
County of Maricopa.

By S. Muhammad Deputy


Judge of the Superior Court

1
2 CONSENT TO JUDGMENT

3 1. Defendants state that no promise of any kind or nature not contained in this
4 Consent Judgment was made to induce them to enter into this Consent Judgment and that
5 they have entered into the Consent Judgment voluntarily.


6 2. Defendants have fully read and understood this Consent Judgment, understand
7 the legal consequences involved in signing it, assert that this is the entire agreement of
8 the parties, and that there are no other representations or agreements not stated in writing
9 herein, and no force, threats or coercion of any kind have been used to obtain its
10 signature.

11 3. Defendants acknowledge that the State of Arizona's acceptance of this Consent
12 Judgment is solely for the purpose of settling this litigation and does not preclude the
13 Attorney General or any other agency or officer of this State or subdivision thereof, from
14 institution other civil or criminal proceedings as may be appropriate now or in the future,
15 other than the limitations expressed in paragraph 32.

16 4. Defendants represent and warrant that the person signing below on their behalf
17 is duly appointed and authorized to do so.

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19 Dated: 8/24/09

Dated: 8/24/09

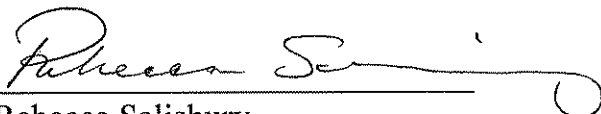
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21 
22 Richard Winer, individually,
23 and as authorized agent for
24 Taken Care of Investments, LLC,
25 Homeowner Solutions, LLC,
26 Bourbon Street Property Management, LLC,
and Filibuster, LLC


Colleen Winer

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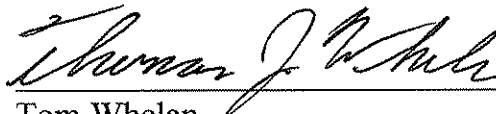
APPROVED AS TO FORM AND CONTENT

TERRY GODDARD, Attorney General



Rebecca Salisbury
Assistant Attorney General
for State of Arizona and Superintendent
Felecia A. Rotellini

WHELAN LAW GROUP, PLC



Tom Whelan
Attorney for Defendants